



British Columbia Securities Commission

Citation: 2013 BCSECCOM 300

**Won Sang Shen Cho, also known as Craig Cho,
d.b.a. Chosen Media and Groops Media**

Securities Act, RSBC 1996, c. 418

Hearing

Panel	Brent W. Aitken Audrey T. Ho Don Rowlatt	Vice Chair Commissioner Commissioner
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Date of hearing May 27, 2013

Submissions completed May 27, 2013

Date of Decision August 1, 2013

Appearing

Brigeeta C. Richdale For the Executive Director

Patrick J. Sullivan For Won Sang Shen Cho (limited retainer)

Findings

I Introduction

- ¶ 1 This is the liability portion of a hearing under sections 161, 162 and 174 of the *Securities Act*, RSBC 1996, c. 418 (the “Act”).
- ¶ 2 On January 15, 2013 the executive director issued a temporary order and notice of hearing alleging that Won Sang Shen Cho, Chosen Media, and Groops Media distributed securities without having filed a prospectus, contrary to section 61 of the Act, and that Cho and Chosen Media made misrepresentations to investors regarding Chosen Media contrary to section 50(1)(d).
- ¶ 3 On May 2, 2013 the executive director issued an amended temporary order and notice of hearing that, among other things, added the allegation that Cho and Chosen Media perpetrated a fraud, contrary to section 57(d), and that Cho and Groops Media made misrepresentations to investors regarding Groops Media contrary to section 50(1)(d).
- ¶ 4 Cho did not appear at the hearing. He was represented by counsel for the purpose of making certain admissions and to provide an opening statement based on the original notice of hearing. After doing so, counsel left the hearing.



II History of proceedings

Adjournments

- ¶ 5 Following three adjournments, the hearing took place on May 27, 2013. By consent, the temporary order was extended until a hearing is held and a decision is rendered.

Freeze order application

- ¶ 6 On July 16, 2012 the Commission issued an order under section 151(2) freezing about \$36,000 in a bank account registered to Cho.
- ¶ 7 On April 23, 2013, Cho applied to vary the freeze order to allow the payment of \$25,000 as a retainer for legal fees. The application was opposed by the executive director.
- ¶ 8 Cho submitted affidavit evidence to the effect that he had no bank account other than the one frozen by the freeze order, that he earns less than \$5,000 a month and nets less than \$1,000 a month, and that he has no other ability to pay the \$25,000 retainer.
- ¶ 9 Cho argued that he has a right to be represented by legal counsel at the hearing and is entitled to the frozen funds to retain counsel.
- ¶ 10 As stated by the Commission in *Amswiss* [1992] 7 BCSC Weekly Summary 12, the purpose of a freeze order is to preserve property for persons who may have common law or statutory claims to or interests in it. This is a significant benefit to the public interest that must be weighed when considering any application to release property frozen under section 151(2).
- ¶ 11 Here, the assets frozen totalled about \$36,000. Cho sought \$25,000, which would remove 70% of the funds frozen, leaving only \$11,000 available to satisfy potential investor claims. At the time of the application, the losses of three of the five investors in Cho's investments totalled \$57,000.
- ¶ 12 Furthermore, Cho's evidence in support of his application was inadequate. For example, he described his income and expenses from providing certain web-based services but did not indicate if he has property or other assets beyond a bald statement that he has no other bank account and no ability to pay the legal fees. Nor did he describe any efforts made to finance legal fees even though he had had nine months to do so since the issuance of the freeze order in July 2012.
- ¶ 13 For those reasons, we denied the application.
- ¶ 14 On May 28, 2013, the Commission revoked the freeze order, with consent, to permit a *pro rata* distribution of the frozen funds to the three investors to whom Cho still owed money.



III Background

- ¶ 15 Cho admits most of the allegations in the original notice of hearing. The facts we cite here are based on those admissions, except where otherwise noted.
- ¶ 16 Cho was a resident of British Columbia at the relevant times. He conducted businesses as a sole proprietor under names that included Chosen Media and Groops Media.
- ¶ 17 Chosen Media is an online media company, website design company, and media buying agency. Groops Media is a media company operating various websites.
- ¶ 18 Between January 2011 and February 2012, Cho, doing business as Chosen Media, promoted securities on the Vancouver Craigslist website and sought minimum investments of \$5,000.
- ¶ 19 Cho admits to promising rates of return from 30% to 50% in 40 to 70 days (in the amended notice of hearing, the executive director alleges that Cho promised rates of return from 30% to 70% in 30 to 90 days) and to telling prospective investors that he would deposit their funds into accounts at various sports betting websites. He admits he told investors that profit would be generated by the “generous signup and reload bonuses” provided by the sports betting websites.
- ¶ 20 The executive director alleges that Cho also told prospective investors that the online wagering would be “risk-free”.
- ¶ 21 We find that the executive director proved the additional allegations in the amended temporary order and notice of hearing. For instance, Cho gave to investors investment proposals and entered into investment contracts with them that read, in part:
- a) “40% ROI within 60 days”... “Regardless of the outcome, no funds will be lost.”... “Based on the 100k example. Gross profits will be 50-80k. Your return will be a minimum 40%”
 - b) “50% ROI within 90 days”... “Regardless of the outcome, no funds will be lost.”... “Based on the 100k example. Gross profits will be 50-80k. Your return will be a minimum 40k”
 - c) “Minimum Investment \$10K. 40% ROI within 60 days”
 - d) “If you wish to invest 5k into the sportsbook investment. This would be for 45 days with an ROI between 40-50%”
 - e) “[Investor SD] wishes to invest \$20,000 in Chosen Media’s online investment, in exchange for a 60% return within 45 days from the date of this contract”



- f) “[Investor RVD] wishes to invest \$20,000 in Chosen Media’s online investment, in exchange for a 50% return within 60 days from the date of this contract”
- g) “[Investor BM] wishes to invest \$35,000 in Chosen Media’s online investment, in exchange for a 70% return within 60 days from the date of this contract”
- h) “[Investor BM] wishes to invest \$60,000 in Chosen Media’s online investment, in exchange for a 50% return within 35 days from the date of this contract” and
- i) “[Investor BM] wishes to invest \$90,000 in Chosen Media’s online investment. In exchange for a 60% return, on top of the principal, within 45 – 60 days from the date of this contract”.

¶ 22 Cho raised a total of \$101,846 from five investors, to whom he returned purported investment returns of \$62,000.

¶ 23 Cho told prospective investors that there were more investors with Chosen Media than there actually were, and used multiple identities in his correspondence with investors to create the impression that there were more employees with Chosen Media than there actually were.

¶ 24 In December 2012, during the course of the Chosen Media investigation, Cho sent an e-mail promoting an investment with Groops Media requiring a minimum \$10,000 investment. He admits that this was after he had been warned by Commission staff that he must comply with the prospectus requirements in the Act when distributing securities through Chosen Media. The executive director alleges that Cho told the investor (who turned out to be an undercover Commission staff investigator) he would guarantee a minimum return of 20% within six months. We find the executive director proved this allegation.

¶ 25 Cho admits that he, Chosen Media, and Groops Media contravened section 61 of the Act. He does not admit the executive director’s allegations of misrepresentation and fraud.

IV Analysis and findings

A Illegal distribution of securities

¶ 26 Cho admits that he, Chosen Media and Groops Media, distributed securities without having filed a prospectus, in contravention of section 61 of the Act.



¶ 27 Having considered Cho’s admissions and the other evidence, we find that the respondents contravened section 61(1) of the Act.

B Misrepresentation

¶ 28 Section 50(1)(d) states that “A person . . . with the intention of effecting a trade in a security, must not . . . make a statement that the person knows, or ought reasonably to know, is a misrepresentation.”

¶ 29 Section 1(1) of the Act defines “trade” to include “a disposition of a security for valuable consideration” and “any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of” a disposition of a security for valuable consideration.

¶ 30 By Cho’s admissions that he and the other respondents contravened section 61(1), he necessarily admits that their arrangements with investors were securities.

¶ 31 Section 1(1) of the Act defines “misrepresentation” to include “an untrue statement of a material fact” and “an omission to state a material fact that is . . . necessary to prevent a statement that is made from being false or misleading . . .” That section defines “material fact” as “a fact that would reasonably be expected to have a significant effect on the market price or value” of the security in question.

¶ 32 Cho told prospective investors that there were more investors with Chosen Media than there actually were, and he used multiple identities in his correspondence with investors to create the impression that there were more employees with Chosen Media than there actually were. This was dishonest, but the far more serious dishonesty relates to his promises about rates of return.

¶ 33 The return that one could expect to make from an investment, and the degree of risk associated with that investment, are clearly factors that would reasonably be expected to have a significant effect on the price and value of the investment. The value of any investment is inextricably linked to the risk associated with it. Not only did Cho not tell his investors the risks associated with the high rate of return, he went further and told them that no money would be lost and hence the investment was “risk-free”.

¶ 34 A rate of return of 30% to 70% in 30 to 90 days would equate to an annual non-compounded return of between 120% and 840%. A guaranteed minimum return of 20% within six months would equate to an annual non-compounded return of 40%. In our view, these rates of return are impossible to achieve, in the absence of significant risk, on a sustained basis through legal means, as this Commission has found in previous cases (see *International Fiduciary Corp SA*, 2008 BCSECCOM 107, and *Manna Trading Corp. Ltd.*, 2009 BCSECCOM 426).



- ¶ 35 We find that Cho’s statements on rates of return were untrue statements of material facts and his omission of the associated risks were omissions of material facts because both would reasonably be expected to have a significant effect on the value of the investment.
- ¶ 36 We find that Cho made these misrepresentations with the intention of trading in securities. We find that Cho contravened section 50(1)(d).

C. Fraud

- ¶ 37 Section 57(b) of the Act states that “A person must not, directly or indirectly, engage in or participate in conduct relating to securities or exchange contracts if the person knows, or reasonably should know, that the conduct perpetrates a fraud on any person.”
- ¶ 38 In *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7, the British Columbia Court of Appeal stated the following regarding fraud in the context of the Act:

“Fraud is a very serious allegation which carries a stigma and requires a high standard of proof. While proof in a civil or regulatory case does not have to meet the criminal law standard of proof beyond a reasonable doubt, it does require evidence that is clear and convincing proof of the elements of fraud, including the mental element.”

- ¶ 39 The British Columbia Court of Appeal in *Anderson* cited the elements of fraud from *R. v. Theroux*, [1993] 2 SCR 5 (at p. 20):

“...the actus reus of the offence of fraud will be established by proof of:

1. the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and
2. deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim’s pecuniary interests at risk.

Correspondingly, the mens rea of fraud is established by proof of:

1. subjective knowledge of the prohibited act; and
2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist in knowledge that the victim’s pecuniary interest are put at risk).”

- ¶ 40 In *R. v. Cuerrier*, [1998] 2 S.C.R. 371, the court dealt with whether non-disclosure can constitute fraud. The court stated (at p. 116), “the essential elements of fraud are dishonesty, which can include non-disclosure of important facts, and deprivation or risk of deprivation.”



¶ 41 Cho's conduct was dishonest: we have found he made misrepresentations contrary to section 50(1)(d). As a result of his dishonest conduct, investors' pecuniary interests were put at risk and three of the five investors suffered actual loss. At the time the amended notice of hearing was issued, these investors were still owed in total \$57,000.

¶ 42 We find that Cho and Chosen Media perpetrated a fraud, contrary to section 57(b).

V Submissions on Sanctions

¶ 43 We direct the parties to make their submissions on sanctions as follows:

By September 6 The executive director delivers submissions to the respondents and to the secretary to the Commission

By September 20 The respondents deliver response submissions to the executive director and to the secretary to the Commission.

Any party seeking an oral hearing on the issue of sanctions so advises the secretary to the Commission

By September 27 The executive director delivers reply submissions (if any) to the respondents and to the secretary to the Commission.

¶ 44 August 1, 2013

¶ 45 **For the Commission**

Brent W. Aitken
Vice Chair

Audrey T. Ho
Commissioner

Don Rowlatt
Commissioner

